

CITY OF ALAMO HEIGHTS
CITY COUNCIL
February 9, 2009

A regular meeting of the City Council of the City of Alamo Heights, Texas was held at the Council Chambers, 6120 Broadway, at 5:30 p.m. on Monday, February 9, 2009.

Present and composing a quorum were:

Mayor Louis Cooper
Mayor Pro-Tempore Jill Souter
Councilman Stan McCormick
Councilman Bobby Rosenthal
Councilman Bill Kiel
Councilwoman Susan Harwell

Also attending were:

City Manager Rebecca Waldman
City Attorney Mike Brenan
Assistant City Manager/Public Works Director Shawn P. Eddy
Assistant to City Manager/Information Technology Manager Marian Ramirez
Community Development Director Ann McGlone
Police Chief Rick Pruitt

Absent were:

Human Resource Manager/Deputy City Secretary Judith E. Surratt
Finance Director Cynthia Barr
Fire Chief Bill Hagendorf

*

*

*

Mayor Louis Cooper opened the meeting at 5:34 p.m. and asked City Council for any corrections to the minutes of the January 26, 2009, City Council Meeting. Mayor Pro Tem Souter and councilmembers Bill Kiel, Stan McCormick, and Susan Harwell requested amendments. A motion was made by Councilman McCormick to approve the minutes as amended. The motion was seconded by Councilwoman Harwell and passed by unanimous vote.

*

*

*

Citizens To Be Heard Concerning Non-Agenda Items

Margaret Spencer, 140 Patterson Avenue, asked what the checks and balances were in the permitting process for structures. She recommended that both the Director and the City Manager sign off on all permits. Ms. Spencer expressed concern for the swimming pool that is located on Torcido.

*

*

*

Item # 3 *City Manager's Report*

a. Cancellation of the March 9, 2009 Council Meeting due to Spring Break

Rebecca Waldman, City Manager, informed City Council that the March 9th City Council meeting is cancelled due to Spring Break. A special meeting may be called during the week of March 16, 2009, if needed.

b. Mayor Cooper's nomination to the VIA Citizens Advisory Council

Ms. Waldman provided background information on the VIA Citizens Advisory Council. Mayor Cooper's nomination to the VIA Citizens Advisory Council is Ms. Pamela Morsi Kiel. The VIA Board of Trustee will consider Ms. Kiel's nomination on February 24, 2009.

c. Update on the Design Workshop for the Comprehensive Plan

Ann McGlone, Community Development Director, presented a PowerPoint presentation. There was high participation from the community. Different ideas were discussed at 10 different tables and many of the solutions were similar and overlapping. The first draft of the Comprehensive Plan will be presented to the community at future neighborhood meetings this spring.

d. Recognition of Corporal Tom Vitacco and Officer Mike Davis for excellence in investigative technique and dedication to duty

Rick Pruitt, Police Chief recognized Corporal Tom Vitacco and Officer Mike Davis. Police Chief Pruitt identified the significant accomplishments and thanked the officers for their many hours of dedicated service.

Councilman Kiel thanked Corporal Tom Vitacco and Officer Mike Davis for the risks that they take to keep the community of Alamo Heights safe and quiet.

e. Introduction of the City of Alamo Heights' new website

Marian V. Ramirez, Assistant to City Manager/Information Technology Manager, presented a PowerPoint presentation on the features and navigation of the City of Alamo Heights' website. Ms. Ramirez displayed the homepage and the ability to view meeting notices, city council meeting minutes and ordinances. The new website will also have links to other websites.

Mayor Pro Tem Souter requested that the Alamo Heights Independent School District be placed on the homepage of the website. Ms. Ramirez confirmed that it will be included.

Councilman Kiel asked if detailed information related to demolition notices will be posted on the website. Ms. Ramirez stated that the citizen will be able to view them in the future. Currently, it is in the process of being developed.

Councilman Rosenthal complimented Ms. Ramirez for her dedication. Mayor Pro Tem Souter expressed that the website looked easier to navigate and more customer friendly.

Councilman McCormick inquired if information may be posted related to criminal activities. He noted that this is a good way to communicate to the community about what is going on in their neighborhood, for example, robberies.

Ms. Ramirez introduced Connect-CTY, a supplement of communication for notifications. From property owners, citizens and renters, people are able to receive notification of agendas, council meeting minutes, public notices and more. Telephone notifications will be used on an emergency basis only.

Mayor Pro Tem Souter inquired if businesses may be placed on the website. Ms. Ramirez replied that as a business receives a certificate of occupancy, the business information will be placed on the website. This part of the website is under construction.

* * *

Consent Items

Item # 4 Mayor Cooper read the following caption.

**ACCEPTANCE OF A DONATION FROM THE ALAMO HEIGHTS
CHAMBER OF COMMERCE IN THE AMOUNT OF \$500.00 TO FUND
THE ALAMO HEIGHTS POLICE DEPARTMENT D.A.R.E. PROGRAM**

A motion for approval was made by Mayor Pro Tem Souter. The motion was seconded by Councilman Rosenthal and passed by unanimous vote.

* * *

Items for Individual Consideration.

Item #5 Mayor Cooper read the following caption.

**A REQUEST FOR A DEMOLITION PERMIT FOR 306 ABISO AVENUE
BY KATE IMBER, OWNER, REPRESENTED BY JOHN DANCEY OF
FORTALEZA CUSTOM HOMES & DESIGN, LP, TO DEMOLISH AN
EXISTING ONE-STORY DETACHED TWO-CAR GARAGE FOR THE
PURPOSE OF CONSTRUCTING A NEW ONE-STORY DETACHED
TWO-CAR GARAGE WITH A GUEST ROOM ON A PROPERTY
ZONED SINGLE FAMILY – B**

Ann McGlone, Community Development Director, made a PowerPoint presentation on the specifics of the case and followed with a recommendation of approval.

Kate Imber, 306 Abiso Avenue, stated that there is no foundation and a cracked sill. The garage is prone to flooding. Ms. Imber circulated pictures of the current structure. Ms. Imber stated that her home, located in the cottage neighborhood, is small and she would like a bed and bath for guests.

Councilman Kiel thanked Ms. Imber for keeping the structure one-story. Councilwoman Harwell asked Ms. Imber how this relates to drainage. Ms. Imber replied that it will improve the drainage.

Councilman Rosenthal asked if there are any issues related to potentially creating two residences. Ms. McGlone stated that there are no issues due to the lack of a kitchen. Mayor Pro Tem Souter asked about separation requirements between the garage and living areas concerning safety issues and carbon monoxide. Ms. McGlone replied that a standard permit requires a separation and the requirement has been met.

A motion for approval was made by Councilman Kiel. The motion was seconded by Mayor Pro Tem Souter and passed by unanimous vote.

*

*

*

Item # 6

Mayor Cooper read the following caption.

**A REQUEST FOR ZONING CHANGE FOR 105 MONTCLAIR AVENUE,
BY JIMMIE V. & MELISSA S. THURMOND, OWNERS, REPRESENTED
BY LIFSHUTZ COMPANIES, LP, FOR A CHANGE IN ZONING FROM
(2F-C) TWO-FAMILY DWELLING DISTRICT TO (O-1) OFFICE
DISTRICT ON LOTS 44 & 45, BLOCK 77, CB 4050**

Ms. McGlone made a PowerPoint presentation that included photos and a zoning map. The Planning and Zoning Commission recommended approval of this zoning change, with the obligation to provide the one foot no build easement on the western edge of the property.

Councilmembers Kiel and McCormick asked about the four parking places in the rear and whether the garage would be demolished. James Lifshutz, Lifshutz Companies, stated the intent is to turn the garage into a carport by opening the north end of the garage into the alley.

Councilman McCormick asked when the house was built and how long it has been since a family occupied the house. Mr. Lifshutz replied it has been vacant for two years. Councilman Kiel stated that the Bexar County Appraisal District showed the house was built in 1905.

Mayor Pro Tem Souter asked Michael Brennan, City Attorney, if the City Council can lift the one foot easement on this property. Michael Brennan, City Attorney, stated that the City Council could lift the easement if the property owner agreed and it was in the public interest. There was discussion among the City Council regarding easements.

Laura Theurer, 139 Wildrose Avenue, expressed her fear of changes. She is aware that Mr. Lifshutz is a developer. Ms. Theurer questioned if the process would be difficult to change

zoning from O-1 to B-1. She stated that the house would need to be modified to provide handicap accessibility.

Margaret Spencer, 140 Patterson Avenue, asked if City Council would be setting a precedent if this item is approved. Ms. Spencer questioned if the entrances of all commercial business properties need to face Broadway. Ms. McGlone stated that B1, B2 and B3 zoning are required to have an entrance off Austin Highway or Broadway, but not for O-1 zoning.

Councilman Kiel asked Mr. Brennan about legal precedent. Mr. Brennan replied that it would not be a precedent. Councilmember Kiel and Mayor Pro Tem Souter commented that each request is reviewed on a case by case basis.

Councilwoman Harwell asked Ms. McGlone about comments from the citizens that attended the previous Planning and Zoning Commission meeting. Ms. McGlone stated that Charles Noble, owner of Cooper's Meat Market and Dollhouse supported the requested zoning change. However, he expressed concern regarding the overflow of parking if the proposed office hosted a large meeting.

There was discussion among the City Council regarding parking spaces. Ms. McGlone stated that the square footage of the existing structure is 1,800 square feet and therefore requires six parking spaces, or one space per each 300 square feet. The City Council inquired what kind of office this would be. Ms. McGlone replied that the Thurmonds have testified that there is interest from attorneys, accountants and architects.

Councilman McCormick expressed concern about parking becoming an issue. Mayor Pro Tem Souter stated that the applicant is providing adequate parking spaces required by Code.

Councilman Kiel suggested utilizing a Special Use Permit (SUP) for the usage. Councilman Kiel expressed concern about Cooper's Meat Market being joined with the subject property to construct a larger building. Councilman Kiel's opinion was that if rezoned as per the request, it would increase the chance of the property being demolished.

Mr. Lifshutz stated that there has to be a permit holder, himself, tenant, or a successor in relation to a SUP. Mayor Pro Tem Souter stated that it depended on how the SUP is written and Mr. Brennan agreed. Mayor Pro Tem Souter stated that the zoning, 2F-C, stays on the land and the SUP may be removed at a future time.

Mr. Lifshutz stated that one of his desires for the property was to add market value. Mr. Lifshutz added that he had presented this case to the Planning and Zoning Commission and their recommendation was to approve this item. Mr. Lifshutz stated that his zoning request is appropriate and is not certain if Cooper's Meat Market will ever be purchased to become a larger business but that is not the intent.

Councilman Rosenthal asked Mr. Brennan what the difference was between granting O-1 zoning and an SUP that follows the owner. Mr. Brennan stated that an SUP provides condition(s). Mayor Louis Cooper stated that an SUP would be a different request that would come back to

City Council. He reminded City Council that the Planning and Zoning Commission made a recommendation for an O-1 zoning change. Mayor Pro Tem Souter suggested that the SUP may follow the owner and not the land.

Councilman Kiel stated that Tom McGaughy, Chairman of the Planning and Zoning Commission, had suggested a SUP but the Commission did not support his suggestion. Councilman Kiel acknowledged that changing the zoning would add value to the property. Councilman Kiel expressed concern about the possibility of a demolition and the ability to join with the adjacent site and create a larger commercial business.

Councilman Kiel asked Mr. Brennan if there is a way to stop the two properties from joining in the near future. Mr. Brennan replied yes, in a no build or a non-access easement to serve as a barrier.

Mr. Lifshutz stated that he wants to provide the property its utmost economic value and expressed that a SUP would not provide that.

Councilman Rosenthal asked Mr. Brennan if City Council has the ability to expand the no-build easement to a non-access easement. Mr. Brennan replied yes if Mr. Lifshutz made an oral modification to his application.

Mayor Pro Tem Souter referenced a Zoning Code, related to Off-Street Parking Incidental to the Structure, that if the current owner made an application for a demolition then a parking lot could be construed on the subject property as an auxiliary use to B-1. Mayor Pro Tem Souter stated that the City Council could only approve a 180-day delay of the demolition request.

Councilman Kiel stated that if there is a rezoning granted, there would be a greater risk of the house being demolished.

Mayor Pro Tem Souter portrayed a scenario: there is an SUP on the property and the current property owner asks for a zoning change of O-1. She asked Mr. Brennan if the SUP would be removed due to the zoning change of O-1, and Mr. Brennan confirmed that it would.

Councilman Kiel referenced a similar situation regarding a psychologist's office and a garage and the SUP has worked fine.

Councilman Kiel stated that he saw two options: 1) providing the appropriate SUP by modifying the existing SUP or 2) writing a new SUP for this property. Mayor Pro Tem Souter asked what is the process if the Planning and Zoning Commission rejected the SUP. Mr. Brennan noted that the item would be presented back to City Council with a recommendation of denial from the Planning and Zoning Commission.

Councilman Rosenthal reminded the City Council of the reason for this request, the use of the property. He stated that in prior discussions, there was intent that SUPs are to be personal. Councilwoman Harwell concurred that SUPs at times are longer than their intended use.

Mr. Lifshutz asked how the SUP may be revoked. Mr. Brennan stated if conditions are met, there is no need to revoke the SUP. However, if conditions are broken, the City Council may revoke the SUP.

Mr. Lifshutz reiterated his request for the zoning change and stated that he had presented this item to the Planning and Zoning Commission with similar conversations. Mr. Lifshutz informed the City Council that his contract expires on the 10th of February and that he may no longer be involved and negotiations would be with someone else.

Mayor Pro Tem Souter asked Mr. Lifshutz how he will address the American's with Disability Act (ADA) compliance. Mr. Lifshutz replied that he will make the house ADA compliant via the rear entrance, making an accessible path and will make modifications to a bathroom.

Councilman Rosenthal asked if there may be conditionals on a no access agreement for the entire lot on an O-1 zoning. Mr. Brennan expressed the need to be cautious with conditional zoning.

Mr. Brennan informed the City Council that if a zoning application is denied, abandoned or withdrawn that it may not return for consideration until six months later. He mentioned that the City Council may ask for a continuance, refer the item to the Planning and Zoning Commission or table for a specific time period.

Jimmie Thurmond, owner of 105 Montclair Avenue, stated that he and his wife, Melissa, have maintained and cared for the home for 25 years. Prospective tenants have had a variety of reasons for not purchasing the home, such as its nearness to Broadway or the business located adjacent to the property. Architects, attorneys and accountants have expressed interest in the home as office space.

Mr. Thurmond wished the home was located anywhere else but at 105 Montclair Avenue. Mr. Thurmond believes the home will serve well as an office.

Councilman McCormick asked Mr. Thurmond how rejecting the zoning change affects him. Mr. Thurmond stated that the real estate sales have decreased. He believes that there will be a continued downfall, with no one buying real estate.

Mayor Pro Tem Souter expressed concern with two issues: encroachment into the neighborhood by commercial development and the house. The house is surrounded by multi-family and two commercial developments.

Mayor Cooper stated for those reasons the property is unique.

Councilman Rosenthal made a motion to approve the recommendation of the Planning and Zoning Commission to change the zoning to an O-1, to add the obligation to provide a one-foot no access agreement along the western boundary of the property, as well as a one foot no build easement.

Mr. Brennan asked Mr. Lifshutz if he would be interested in modifying his application. Mr. Lifshutz confirmed that he would.

There was discussion among the councilmembers regarding different scenarios.

Councilman Rosenthal's motion failed for lack of a second.

Councilman Kiel stated that there is a way that this property may be used as an office. He expressed the marketability would increase if an SUP would be attached to the land. Councilman McCormick stated that the developer, James Lifshutz, is a reputable developer that is aware of the community.

Suzanne Menick, Real Estate Agent, stated that the house, in its current condition, will not be as marketable as an office. The owner will need to make modifications to best suit an office-like atmosphere. Ms. Menick said that, if there are conditions, the property will have less value.

Councilman Kiel agreed that changing the zoning to O-1 will increase the property's value but it brings concern to the community.

Mr. Lifshutz stated that it may be in the best interest for the Thurmonds to be referred back to the Planning and Zoning Commission so they may continue.

Mr. Brennan advised the City Council regarding motions and next steps.

Mayor Pro Tem Souter asked Ms. McGlone about the action taken at the prior Planning and Zoning Commission Meeting. Ms. McGlone stated that the Chairman, Tom McGaughy, had recommended the SUP, however the vote was unanimous for the Planning and Zoning's recommendation.

Councilwoman Harwell asked if the Planning and Zoning Commission moved forward with the SUP idea, would it be required to be posted. Ms. McGlone stated that reposting will be necessary to accurately inform the public.

There was discussion among the City Council on different scenarios if an SUP went with the owner, land or structure.

Councilman Kiel stated that the structure needs to be preserved. Councilwoman Harwell agreed. Ms. McGlone stated that a more appropriate tool to save buildings would be a zoning regulation rather than a case by case SUP.

Councilman McCormick asked Mr. Lifshutz if there was a need to use the parking lot of Cooper's Meat Market, and Mr. Lifshutz responded that there is not.

Councilman Kiel made a motion to refer the item back to the Planning and Zoning Commission for the consideration of a SUP. If the SUP consideration is rejected then it would be presented to the City Council at a future date.

There was discussion among the City Council and city staff on a future date. Mayor Pro Tem Souter asked to check if it may be presented at the March 23, 2009 meeting. Rebecca Waldman, City Manager, stated that it may not be presented at the March meeting due to publication requirements. It may be presented at the 1st or 2nd City Council meeting in April 2009.

There was discussion among the City Council on the purpose of a SUP and next steps.

Margaret Spencer, 140 Patterson Avenue, observed that, after hearing all the discussions, the request should be approved. Ms. Spencer stated that the zoning change should be granted.

Mayor Pro Tem Souter inquired if a no build easement would allow development between the home and Cooper's Meat Market. Councilman Rosenthal responded that the no build easement does not allow development between the home and Cooper's Meat Market because the easement is connected with the land and would be shown on the replat.

Councilwoman Harwell stated that the best interest would have the SUP with the owner and not the property.

Councilman Kiel withdrew his motion.

A motion for approval was made by Councilman Rosenthal with a modification for the Planning and Zoning Commission's requirement for a one foot no build easement and instead to establish a one foot non-access easement inside and adjacent to the entire westerly boundary of Lot 45 to prevent construction of improvements (such as parking facilities) across the westerly boundary of the rezoned property, with such easement to be acceptable to the City and recorded in the Real Property records of Bexar County, Texas, provided that fences, walls and other barriers may be constructed in the easement property.

There was discussion among the City Council on differences between the easements and definitions.

The motion was seconded by Councilman Kiel. After discussion among the City Councilmembers, the motion passed by unanimous vote.

There was discussion among the City Council in regards to moving forward with a Historic Preservation Ordinance.

*

*

*

Item #7

Mayor Cooper read the following caption to an Ordinance.

ORDINANCE NO. 1808

AN ORDINANCE RENAMING CHAPTER 9 – GARBAGE, TRASH AND WEEDS OF THE CODE OF ORDINANCES TO “SOLID WASTE”, AMENDING ARTICLE I, AMENDING AND RENAMING ARTICLE II TO “COLLECTION” AND ADOPTING A NEW ARTICLE VI TITLED “SOLID WASTE OPERATORS”

Assistant City Manager/Public Works Director, Shawn Eddy presented a PowerPoint that outlined the proposed action that staff recommended approval.

Mayor Pro Tem Souter shared information that she had obtained from a TML meeting with the City Councilmembers about the City issuing franchises for the provision of commercial solid waste services in the City. She mentioned that either the City or the franchisee could bill customers and that the franchise could include a provision for the franchisee to provide two commercial size dumpsters that are used for bulk trash in the community.

Mr. Eddy stated that he had conducted research on the City’s ability to issue franchises for commercial solid waste services and thanked Mayor Pro Tem Souter for sharing additional information that he had not discovered in his research. Mr. Eddy reported that the Infrastructure and Services Committee had discussed the option of franchises and decided to proceed with the proposed improvements and consider franchises sometime in the future.

Councilman Kiel observed that dumpsters are currently accessible anytime. Mayor Pro Tem Souter asked what hours would be best. Councilman Kiel suggested between the hours of 8:00 a.m. until 6:00 p.m. The City Councilmembers agreed for this timeframe of dumpster pickup.

A motion for approval was made by Councilwoman Harwell to include the amendment of revised hours of dumpster pickup between 8:00 a.m. – 6:00 p.m. The motion was seconded by Councilman Rosenthal and passed by unanimous vote.

*

*

*

Staff Reports

Item # 8 Presentation of the City’s proposed Storm Water Master Plan (SWMP) and Phase 2 Storm Water permit application

Assistant City Manager/Public Works Director Shawn Eddy provided a PowerPoint presentation which outlined the Storm Water Management Plan (SWMP) to comply with the Phase 2 Stormwater Permit Program. The program was developed by the Texas Commission on Environmental Quality (TCEQ) to create a mechanism for Texas cities with populations between 1,000 and 50,000 to comply with the Federal Water Pollution Control Act of 1972.

The presentation included a proposal for the City Council to adopt an Ordinance that declares City drainage to be a public utility, creates a Stormwater Fund, prohibits illicit


Councilman McCormick voiced his reservations about implementing additional fees and inquired what such funds would be utilized to fund.


Mayor Pro Tem Souter asked if funding from the City's certificates of obligation may be used to finance a comprehensive storm water study. Mr. Eddy stated that a portion of the certificates of obligation could be used for this purpose but would reduce the amount of funding available for street improvements.

Item # 9 **Presentation of requests for FY 2010 federal appropriations to be submitted for inclusion in the pending Economic Stimulus legislation**

Councilman McCormick complimented city staff for looking into this application.

* * *


Jennifer Reyna, TRMC
City Secretary


Louis Cooper
Mayor